

EXHIBIT

#70

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195(MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ORIGINAL

BAYONNE MEDICAL CENTER, :
Debtor and :

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating : DEPOSITION OF:

Trustee and Estate :

Representative for the Estate : MARVIN APSEL

of Debtor, Bayonne Medical :

Center, :

Plaintiff, :

-VS- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GRUEN & GOLDSTEIN, ESQS.,
1150 West Chestnut Street, Union, New Jersey, on
THURSDAY, OCTOBER 14, 2010, commencing at 10:05
a.m., pursuant to Notice.

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1 conversation in which I casually talked about
2 pledges with the foundation person, but I was not
3 absolutely sure.

4 He then basically said, I want a letter from
5 Rob Evans stating that the pledge that I am making
6 is essentially nonbinding. He went into concerns
7 with what if my business gets disrupted or I can't
8 make a pledge. I don't want to be in that position
9 of not being able to meet my obligations.

10 Q. What else, if anything, did he say?

11 A. Who?

12 Q. Avery, he's the "he." You're the
13 "you" and he's the "he"?

14 A. Thank you very much for that
15 clarification.

16 Q. If anything.

17 A. I don't believe there was anything of
18 substance beyond that.

19 Q. What, if anything, did you say in
20 response to that declaration of his?

21 A. I said, "I will communicate that to
22 Rob Evans immediately, and we will get the issue
23 resolved."

24 Q. And did you communicate that to Rob
25 Evans?

1 A. Most assuredly.

2 Q. Was it the same day?

3 A. It was the same day.

4 Q. How did you communicate it to Rob
5 Evans, was it orally or in writing?

6 A. Orally, I went into his office
7 sometime later that afternoon and spoke with him.

8 Q. Were the two of you alone or was
9 there anybody else in the room?

10 A. We were alone.

11 Q. And you told him what?

12 A. I gave him the signed pledge card.
13 He was very happy. But I also informed him that
14 Avery had a concern about the binding obligation on
15 his part for the pledge. And that he was requesting
16 a letter from Rob Evans which basically communicated
17 to him that the pledge would be nonbinding.

18 Q. And what, if anything, did Rob Evans
19 say in response to that?

20 A. He said he would do it.

21 Q. Anything else that you recall in that
22 conversation with Rob Evans?

23 A. No.

24 Q. Let me take you back to the meeting
25 with Avery. It looks like I missed something

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1 Q. You can answer the question.

2 A. I cannot remember.

3 Q. Did anyone ever tell you who it was
4 who filled in the blanks on this document?

5 A. No.

6 Q. After delivering the signed pledge
7 document, I should say a signed pledge document to
8 Rob Evans, and telling him about the letter that
9 Avery wanted, did you have any further involvement
10 in the process of obtaining a pledge from Avery?

11 A. No, none.

12 Q. Do you recall having discussed at any
13 time any issue related to a pledge from Avery with
14 anyone at BMC, beyond the testimony you've already
15 given about your conversations with Lombardo and
16 Evans?

17 A. After I met with Rob Evans and gave
18 him the pledge form, we walked down to the office of
19 Heather Aaron, the CFO. Rob presented the pledge
20 form to Heather Aaron. And I believe there was a
21 conversation replicating what I had told Evans about
22 Avery's request for a letter from Evans about the
23 issue of the pledge being nonbinding.

24 Q. So we can get it isolated, is that
25 the only other conversation that you recall having

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1 A. I'm not aware of that.

2 Q. Did you attend any meetings or
3 luncheons or dinners at the time of the vascular
4 campaign at which a pledge counselor of BMC's made a
5 presentation?

6 A. I don't recall being at any such
7 meeting.

8 Q. Did you ever discuss with anyone at
9 BMC, outside of the context of Avery and Omni's
10 pledge, whether the hospital had a policy with
11 respect to enforcing pledges?

12 A. No.

13 Q. Do you know the name Wozniak, Dr.
14 Wozniak?

15 A. Dr. Deborah Wozniak.

16 Q. Do you know whether Dr. Wozniak made
17 a pledge to BMC?

18 A. I don't know.

19 Q. Do you know if BMC ever filed a
20 lawsuit against any pledgor to enforce a pledge?

21 A. I'm not aware of any such action.

22 MR. PIZZI: Object to the form, no
23 foundation. You can answer.

24 Q. I think it's in Carrie Evans-1, the
25 volume you have in front of you, Tab 22.

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UNITED STATES BANKRUPTCY COURT
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Debtor, :

v. :

BAYONNE MEDICAL CENTER, Debtor :
and Debtor-in-Possession; and :
ALLEN D. WILEN, in his capacity as :
Liquidating Trustee and Estate :
Representative for the Estate of :
Debtor, Bayonne Medical Center, :

Plaintiff, :

v. :

BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :

Defendants. :

DEPOSITION OF

PAUL MOHRLE

ORIGINAL

T R A N S C R I P T of Deposition Proceedings
in the above-entitled matter, as taken by and before MARIA
F. PIOTROWSKI, Certified Court Reporter and Notary Public of
the State of New Jersey, at the offices of SAIBER ATTORNEYS
AT LAW, 18 COLUMBIA AVENUE, FLORHAM PARK, NEW JERSEY, on
WEDNESDAY, SEPTEMBER 15th, 2010 commencing at 10:12 a.m..

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1 Q. So far as you know was any action -- what
2 action, if any, was taken against pledgors before reserves
3 were established for their pledges?

4 MR. GROHS: Object to the form.

5 MR. FALANGA: Object to the form.

6 A. I don't know.

7 Q. What action, if any, was taken by the
8 Foundation, if you know, to collect pledges on account of
9 which reserves have been established?

10 MR. GROHS: Object to the form.

11 MR. FALANGA: Object to the form.

12 A. I don't know.

13 Q. What action, if you know, was taken by the
14 Foundation, whether a reserve were established or not?

15 MR. FALANGA: Object to the form.

16 MR. GROHS: Object to the form.

17 A. I don't know. I don't know.

18 Q. To your knowledge was a lawsuit ever brought
19 against the pledgor by the Foundation?

20 A. Not to my knowledge.

21 Q. To your knowledge was any other action, short
22 of a lawsuit, taken against pledgors to enforce their
23 pledges?

24 MR. FALANGA: Object to the form.

25 MR. GROHS: Object to the form.

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Trustee and Estate :

AVERY EISENREICH

Representative for the Estate :

of Debtor, Bayonne Medical :

VOLUME I

Center, :

(Pages 1-187)

Plaintiff, :

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1 his position was?

2 A. I actually never figured out any of
3 their titles.

4 Q. And when Ms. Evans approached you
5 while you were at the hospital, was that the first
6 time you were ever physically in her presence?

7 A. It could be, I don't remember.

8 Q. Where were you when you had this
9 conversation that led to you putting your signature
10 on Exhibit P-70?

11 A. Her office.

12 Q. Was anyone else present?

13 A. No. I didn't sign it in front of
14 her.

15 Q. Right. I didn't say you did. You
16 met with her and it led to you putting your
17 signature on this; is that true?

18 A. That's true.

19 Q. So tell us as best you recall what
20 she said to you and you said to her in this meeting
21 in her office in or around October 14, 2005.

22 A. She wanted a pledge to the hospital
23 in order to help the hospital build out the space
24 and cover rent for the first couple of years and
25 their leased space, because the space wasn't going

1 to be revenue generating for the first couple of
2 years. To which she said, "If you give us a pledge,
3 it could offset that cost."

4 Q. And did you respond?

5 A. To which I said, "And if the nursing
6 home doesn't get built or the hospital doesn't sign
7 its lease, why would I agree to give you a pledge?"
8 To which she responded, "It's unenforceable,
9 non-binding." To which I said, "Get me a letter
10 accordingly."

11 Q. Anything else said during that
12 conversation?

13 A. I'm sure there were other things
14 said. I don't recall what they were.

15 Q. This is my opportunity to ensure that
16 I've exhausted your memory. Did she say anything
17 else to you in this conversation?

18 A. I don't think so.

19 Q. Now, as of this time frame, you
20 didn't have a letter of intent, correct?

21 A. Correct.

22 Q. So you didn't have any binding
23 contract with the hospital, correct?

24 A. Correct.

25 THE WITNESS: When you asked me about

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(Pages 1-187)

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1 for my lease, and that gave them the ability to do
2 it.

3 Q. You've just told us your explanation
4 for how you get the \$5,000,000; is that right?

5 A. Correct.

6 Q. Did she say anything to you about the
7 \$5,000,000?

8 A. She said something to the effect that
9 it will cost them at least \$100 a square foot to
10 buildout.

11 Q. So this is something in the meeting
12 that she said to you that you now recall, right?

13 A. With respect to the buildout and the
14 rent abatement.

15 Q. So she said it's going to cost \$100 a
16 square foot to build out; is that right?

17 A. Approximately.

18 Q. How does that connect to the
19 \$5,000,000 figure that's on Exhibit P-70?

20 A. It's \$4,000,000, plus the rent
21 abatement.

22 Q. So 40,000 square feet is two floors
23 of 20,000 square feet?

24 A. Correct.

25 Q. And so you say Ms. Evans came up with

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(Pages 1-187)

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1 to be revenue generating for the first couple of
2 years. To which she said, "If you give us a pledge,
3 it could offset that cost."

4 Q. And did you respond?

5 A. To which I said, "And if the nursing
6 home doesn't get built or the hospital doesn't sign
7 its lease, why would I agree to give you a pledge?"
8 To which she responded, "It's unenforceable,
9 non-binding." To which I said, "Get me a letter
10 accordingly."

11 Q. Anything else said during that
12 conversation?

13 A. I'm sure there were other things
14 said. I don't recall what they were.

15 Q. This is my opportunity to ensure that
16 I've exhausted your memory. Did she say anything
17 else to you in this conversation?

18 A. I don't think so.

19 Q. Now, as of this time frame, you
20 didn't have a letter of intent, correct?

21 A. Correct.

22 Q. So you didn't have any binding
23 contract with the hospital, correct?

24 A. Correct.

25 THE WITNESS: When you asked me about

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1 pledge before you signed it; is that right?

2 A. Hindsight, I should have.

3 Q. I need an answer to the question.

4 You didn't think about talking to Mr. Gruen or
5 another lawyer before you signed a pledge for
6 \$5,000,000, is that what you're going to tell us?

7 A. Correct.

8 Q. And Mr. Gruen was among the counsel
9 available to you at the time, right?

10 A. He was.

11 Q. Take a look at Exhibit P-78, which is
12 a letter dated February 12, 2009 from Richard Honig
13 to Stephen Falanga at Connell Foley, reference this
14 case. I'm going to direct your attention to Page 3,
15 the second paragraph from the bottom. The question
16 I have for you, Mr. Honig says the following: "In
17 order to clarify certain of the documents produced,
18 please be advised that the pledge of October 21,
19 2005 by Omni Asset Management replaces the
20 October 14, 2005, of Bayonne Health Care
21 Development, L.L.C., since Bayonne Health Care
22 Development, L.L.C. never formally existed.
23 Moreover, the signature on the pledge is not that of
24 Avery Eisenreich." Is that statement correct?

25 A. The signature is not mine?

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1 A. No. I didn't really view it as a
2 pledge of \$5,000,000. I viewed it as part of a
3 proposed lease transaction.

4 Q. Did you tell anyone in your
5 organization that you were pledging \$5,000,000 as
6 part of a lease transaction?

7 A. I don't have people in my
8 organization I would say that to, either. So I
9 didn't have such a conversation with anybody.

10 Q. Now, did you consider just making the
11 economics of the pledge, the \$5,000,000, part of the
12 deal itself and throwing the pledge out the window;
13 in other words, not even having a pledge?

14 A. I brought that up with Ms. Evans.

15 Q. So tell me what you think I was
16 asking you.

17 A. I asked her, "Why are we structuring
18 it this way? Why don't we structure it as a
19 standard rent concession and buildout."

20 Q. Okay. And what did she say?

21 A. She said she and the hospital
22 preferred doing it this way, which was no sweat off
23 my back, it didn't affect me at all, and I said, "No
24 problem." As long as I was covered with the letter
25 before the lease was signed. I didn't take it as a

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1 Evans, and then you don't recall anything else
2 coming up during the meeting other than all this
3 detail about the fitting out of the space and all
4 that, right?

5 A. Correct.

6 Q. Was Ms. Evans in these meetings where
7 you talked about the details of the lease?

8 A. She took over a big part of it
9 starting from there.

10 Q. But before then she had not been in
11 the meeting with you and Marv Apsel, right?

12 A. I don't remember.

13 Q. So what happened next with regard to
14 what became of Exhibit P-70?

15 A. She called me a couple of times for
16 it. She called me at a later date telling me that
17 the document that I -- then she gave me my comfort
18 letter that told me it's not enforceable. And then
19 that same day she called me back and said that the
20 pledge that she wrote was wrong. To which I said
21 that's good, because you have the wrong entity on
22 it, anyway, and she sent me a new one over. To
23 which I asked her why the date is different, the
24 facility is not going to be built by then. To which
25 she said, "It's not your business, anyway. It's not

1 enforceable and non-binding, and you have a letter
2 from us that it's not enforceable, nor have we ever
3 enforced any pledges. This is what I need for my
4 board," and that was that.

5 Q. I guess I'm confused. When did you
6 get Exhibit P-70 and put your signature on it?

7 MR. GRUEN: Objection. That's
8 compound. Getting it and putting his signature on
9 it would be different things.

10 MR. PIZZI: I'll break it up.

11 Q. When did you get Exhibit P-70 without
12 your signature on it?

13 A. I'm going to assume on or around the
14 14th.

15 Q. And you don't know how you got it?

16 A. She probably sent it over. I got it
17 from her.

18 Q. But you don't know if it came from
19 fax or anything, right?

20 A. No.

21 Q. And then you signed it, right?

22 A. No.

23 Q. You didn't sign it. What piece of
24 paper came next from Ms. Evans?

25 A. The letter.

1 And then afterwards you heard from her that the
2 dates were wrong, right?

3 A. Correct.

4 Q. When you signed it and returned it to
5 Ms. Evans, you don't know how you did that, right,
6 you don't recall how that took place?

7 A. I don't remember.

8 Q. You don't remember if it was mailed
9 or if it was personally delivered or even delivered
10 the day of its date, October 14, 2005, right?

11 A. It wasn't done on October 14, 2005.
12 That was probably the day I got it.

13 Q. It was signed after you got the
14 comfort letter, which we're going to talk about in a
15 minute, Exhibit P-62, right?

16 A. Correct.

17 Q. And that document has a date of
18 October 21, 2005. Do you know if you got the
19 comfort letter after or on the date it was dated?

20 A. I don't remember, but I know I got
21 the letter before I signed the first pledge.

22 Q. In any event, you signed the first
23 pledge, you gave it to Ms. Evans or got it to her in
24 some way, and you signed it under the name of an
25 entity that did not exist, correct?

1 A. Correct.

2 Q. And even though you knew the entity
3 did not exist, you still signed it, right?

4 A. No, I didn't realize it was the wrong
5 entity.

6 Q. You thought you may have formed an
7 entity called Bayonne Healthcare Development,
8 L.L.C.?

9 A. No. I actually thought it was the
10 entity that was going to purchase the land from the
11 hospital.

12 Q. This was the entity that was to be
13 the joint venture between the hospital and you?

14 A. Correct, or the purchaser of the
15 land, right.

16 Q. So you thought the entity that was
17 going to be the obligor on this pledge was actually
18 going to be an entity that the hospital would have
19 an interest in, is that what you're telling us?

20 A. Okay, you can look at it that way,
21 but I wasn't thinking of it that way at all.

22 Q. Well, back in June of 2005 you talk
23 about an entity holding the real estate in which the
24 hospital would have an interest, right?

25 A. Correct.

EXHIBIT

#80

Bayonne Medical Center

29th Street at Avenue E
Bayonne, New Jersey 07002

February 6, 2006

Mr. Avery Eisenreich
Omni Asset Management
26 Journal Square
16th Floor
Jersey City, New Jersey 07306



Dear Mr. Eisenreich:

Our auditors, WithumSmith&Brown, are conducting an audit of our financial statements. For the purpose of independent verification only, please confirm the following information relating to your Contribution and Promise to Give to Bayonne Medical Center as of December 31, 2005:

Date made:	<u>October 21, 2005</u>
Amount:	<u>\$ 5,000,000</u>
Restrictions on period or manner of use:	<u>Unrestricted</u>
Payable in the following installments:	
June 1, 2006	\$ 1,000,000
June 1, 2007	\$ 1,000,000
June 1, 2008	\$ 1,000,000
June 1, 2009	\$ 1,000,000
June 1, 2010	\$ 1,000,000

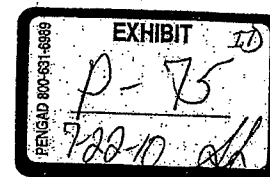
Please indicate in the space provided below whether the above is in agreement with your records. If it is not, please furnish our auditors with any information you may have that will help them reconcile the difference.

After signing and dating your reply, please mail it directly to WithumSmith&Brown, Attn. William Oster, 465 South Street, Suite 200, Morristown, NJ 07960 in the enclosed return envelope or email to boster@withum.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Heather Aaron'.

Heather Aaron
Chief Financial Officer /CFO
Bayonne Medical Center



To: WithumSmith&Brown

The above information regarding the Contribution and Promise to Give made to Bayonne Medical Center agrees with my records at December 31, 2005 with the following exceptions (if any):

Signature: _____

Title: _____

Date: 3/17/06